

single year is exempt from the competitive bidding requirements under this section, if the term of the contract is one year or less.

(2) *Government Master Service Agreement (MSA)*. Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

(3) *Master Service Agreements approved under the Pilot Program or Healthcare Connect Fund*. A eligible health care provider site may opt into an existing MSA approved under the Pilot Program or Healthcare Connect Fund and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

(4) *Evergreen contracts*. (i) Subject to the provisions in § 54.644, the Administrator may designate a multi-year contract as “evergreen,” which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen

contract without undergoing additional competitive bidding, if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

(5) *Schools and libraries program master contracts*. Subject to the provisions in §§ 54.500, 54.501(c)(1), and 54.503, an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium’s existing contract is exempt from the Healthcare Connect Fund competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract. The health care provider must comply with all Healthcare Connect Fund rules and procedures except for those applicable to competitive bidding.

[78 FR 13988, Mar. 1, 2013, as amended at 79 FR 49203, Aug. 19, 2014]

#### § 54.643 Funding commitments.

(a) Once a vendor is selected, applicants must submit a “Funding Request” (and supporting documentation) to provide information about the services, equipment, or facilities selected and certify that the services selected were the most cost-effective option of the offers received. The following information should be submitted to the Administrator with the Funding Request.

(1) *Request for funding*. The applicant shall submit a request for funding (Form 462) to identify the service(s), equipment, or facilities; rates; vendor(s); and date(s) of vendor selection.

(2) *Certifications*. The applicant must provide the following certifications as part of the request for funding:

(i) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true.

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(ii) Each vendor selected is, to the best of the applicant's knowledge, information and belief, the most cost-effective vendor available, as defined in § 54.642(c).

(iii) All Healthcare Connect Fund support will be used only for eligible health care purposes.

(iv) The applicant is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund.

(v) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules, and understands that any letter from the Administrator that erroneously commits funds for the benefit of the applicant may be subject to rescission.

(vi) The applicant has reviewed all applicable requirements for the program and will comply with those requirements.

(vii) The applicant will maintain complete billing records for the service for five years.

(3) *Contracts or other documentation.* All applicants must submit a contract or other documentation that clearly identifies the vendor(s) selected and the health care provider(s) who will receive the services, equipment, or facilities; the service, bandwidth, and costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.*, if services are not being provided on a month-to-month basis). For services, equipment, or facilities provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the service, equipment, or facilities are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the vendor that provides the required information.

(4) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable): bid evaluation sheets; a list of people who evaluated bids (along with

their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the vendor selection/award; copies of notices to winners; and any correspondence with vendors during the bidding/evaluation/award phase of the process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption.

(5) *Cost allocation for ineligible entities or components.* Pursuant to § 54.639(d)(3) through (d)(4), where applicable, applicants must submit a description of how costs will be allocated for ineligible entities or components, as well as any agreements that memorialize such arrangements with ineligible entities.

(6) *Additional documentation for consortium applicants.* A consortium applicant must also submit the following:

(i) Any revisions to the network plan submitted with the Request for Services pursuant to § 54.642(e)(5)(i), as necessary. If not previously submitted, the consortium should provide a narrative description of how the network will be managed, including all administrative aspects of the network, including but not limited to invoicing, contractual matters, and network operations. If the consortium is required to provide a sustainability plan as set forth in § 54.643(a)(6)(iv), the revised budget should include the budgetary factors discussed in the sustainability plan requirements.

(ii) A list of participating health care providers and all of their relevant information, including eligible (and ineligible, if applicable) cost information for each participating health care provider.

(iii) Evidence of a viable source for the undiscounted portion of supported costs.

(iv) Sustainability plans for applicants requesting support for long-term capital expenses: Consortia that seek funding to construct and own their own facilities or obtain indefeasible right of use or capital lease interests are required to submit a sustainability plan with their funding requests demonstrating how they intend to maintain and operate the facilities that are

supported over the relevant time period. Applicants may incorporate by reference other portions of their applications (*e.g.*, project management plan, budget). The sustainability plan must, at a minimum, address the following points:

(A) *Projected sustainability period.* Indicate the sustainability period, which at a minimum is equal to the useful life of the funded facility. The consortium's budget must show projected income and expenses (*i.e.*, for maintenance) for the project at the aggregate level, for the sustainability period.

(B) *Principal factors.* Discuss each of the principal factors that were considered by the participant to demonstrate sustainability. This discussion must include all factors that show that the proposed network will be sustainable for the entire sustainability period. Any factor that will have a monetary impact on the network must be reflected in the applicant's budget.

(C) *Terms of membership in the network.* Describe generally any agreements made (or to be entered into) by network members (*e.g.*, participation agreements, memoranda of understanding, usage agreements, or other similar agreements). The sustainability plan must also describe, as applicable:

(1) Financial and time commitments made by proposed members of the network;

(2) If the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed; and

(3) If the network will include ineligible health care providers and other network members, describe how fees for joining and using the network will be assessed.

(D) *Ownership structure.* Explain who will own each material element of the network (*e.g.*, fiber constructed, network equipment, end user equipment). For purposes of this subsection, "ownership" includes an indefeasible right of use interest. Applicants must clearly identify the legal entity that will own each material element. Applicants must also describe any arrangements made to ensure continued use of such elements by the network members for

the duration of the sustainability period.

(E) *Sources of future support.* Describe other sources of future funding, including fees to be paid by eligible health care providers and/or non-eligible entities.

(F) *Management.* Describe the management structure of the network for the duration of the sustainability period. The applicant's budget must describe how management costs will be funded.

(v) *Material change to sustainability plan.* A consortium that is required to file a sustainability plan must maintain its accuracy. If there is a material change to a required sustainability plan that would impact projected income or expenses by more than 20 percent or \$100,000 from the previous submission, or if the applicant submits a funding request based on a new Form 462 (*i.e.*, a new competitively bid contract), the consortium is required to re-file its sustainability plan. In the event of a material change, the applicant must provide the Administrator with the revised sustainability plan no later than the end of the relevant quarter, clearly showing (*i.e.*, by redlining or highlighting) what has changed.

(b) [Reserved]

[78 FR 13990, Mar. 1, 2013]

#### § 54.644 Multi-year commitments.

(a) Participants in the Healthcare Connect Fund are permitted to enter into multi-year contracts for eligible expenses and may receive funding commitments from the Administrator for a period that covers up to three funding years.

(b) If a long-term contract covers a period of more than three years, the applicant may also have the contract designated as "evergreen" under § 54.642(h)(4) which will allow the applicant to re-apply for a funding commitment under the contract after three years without having to undergo additional competitive bidding.

[78 FR 13991, Mar. 1, 2013]